L & S MINES

IBLA 85-947 Decided June 19, 1987

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, deeming mining claims abandoned and declaring mining claim recordations void. AA-33331 through AA-33354.

Affirmed in part; reversed in part.

1 Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), requires the owner of a lode or placer mining claim located prior to its enactment on October 21, 1976, to file with BLM "within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter," a copy of either a notice of intention to hold the mining claim or an affidavit of assessment work. The phrase "each year thereafter" refers to the years following the calendar year in which either evidence of assessment work or a notice of intention to hold the claim was first filed.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

In order for a document filed with BLM to qualify under 43 U.S.C. § 1744(a) (1982) as a notice of intention to hold a mining claim, the document must have been filed with BLM as a notice of intent, must be a copy of a document that was or will be filed with the local jurisdiction where the claim's location certificate was recorded, and must identify the claim by name, by BLM assigned claim number, or by a description sufficient to locate the claim on the ground.

APPEARANCES: Milton L. Sanstrom, Merle E. Loudon, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Milton L. Sanstrom and Merle E. Loudon have appealed a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated September 17, 1985, declaring 24 lode mining claims abandoned and declaring their recordations void. The reason stated by BLM for its decision was that no affidavit of assessment work or notice of intention to hold had been timely filed for 1979 as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). In their notice of appeal, appellants argue that the claims are not invalid because notices of intention to hold the claims were sent to BLM on October 9, 1979. They have enclosed with their notice of appeal copies of a number of documents pertaining to the claims.

[1] Section 314(a) of FLPMA requires the owner of a lode or placer mining claim located prior to its enactment on October 21, 1976, to file with BLM "within the three-year period following the date of the approval of this Act and prior to December 31 each year thereafter," a copy of either a notice of intention to hold the mining claim or an affidavit of assessment work. The Board has interpreted "each year thereafter" to refer to the years following the calendar year in which either evidence of assessment work or a notice of intention to hold was first filed. Buck Wilson, 89 IBLA 143, 146 (1985); Harvey A. Clifton, 60 IBLA 29, 34 (1981). See NL Industries, Inc. v. Secretary of the Interior, 777 F.2d 433 (9th Cir. 1985).

Appellants' claims were located during 1963, 1964, 1972, and 1974. Accordingly, under the statute appellants were required to file with BLM prior to October 22, 1979, either an affidavit of assessment work or a notice of intention to hold their claims. Because the claims at issue were located prior to October 21, 1976, and were not filed with BLM until 1979, the statutory provision requiring that an affidavit of assessment work or notice of intention to hold be filed "each year thereafter" did not require a subsequent filing until 1980.

The only affidavit of assessment work for 1979 appearing in the case file is date stamped as being receive by BLM December 31, 1979. 1/ Clearly, this affidavit did not satisfy the requirement to file such a document prior to October 22, 1979. Thus, the question is whether, as argued by appellants, the letters they sent to BLM or the documents they have submitted with their notice of appeal qualify as a notice of intention to hold their claims.

[2] In a number of cases the Board has considered whether various documents sent to BLM by mining claim locators qualify as notices of intention to hold a mining claim for the purpose of satisfying the requirement of section 314(a). Based on these decisions, in Add-Ventures, Ltd., 95 IBLA 44, 49 (1986), the Board held that in order for a document filed with BLM to

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1/ This affidavit of assessment work apparently was sent to BLM based on a mistaken belief that either proof of labor or notice of intent to hold was due by December 30. As explained above, appellants were under no obligation to file such a document by December 30. An additional proof of labor was received by BLM during 1980.

qualify under the statute as a notice of intention to hold a mining claim, the document must have been filed with BLM as a notice of intent, must be a copy of a document that was or will be filed with the local jurisdiction where the claim's location certificate was recorded, and must identify the claim by name, by BLM assigned claim number, or by a description sufficient to locate the claim on the ground.

Two letters sent by appellant Sanstrom on behalf of L & S Mines during 1979 are of concern in determining whether appellants filed a notice of intention to hold their claims. The first is a letter dated May 18, 1979, addressed to he district court in Sitka, Alaska. Cf. 30 U.S.C. § 49c (1982). It states that "this letter is a 'Notice of Intention to Hold' our claims." It identifies the claims by providing book and page numbers of their original recordation with the court and listing the claims as "L & S Mines, Inc., Lode claims." A copy of a memorandum submitted by appellants shows that this letter was returned by the court because the signature was not notarized and the amount enclosed was less than the amount of the recording fee. A handwritten note on the memorandum indicates that the letter was sent back and recorded June 4, 1979, giving a book and page reference of the recordation.

The second document for consideration is a letter to BLM dated July 25, 1979, which was received by BLM August 15, 1979. It states that L & S Mines holds 24 lode mining claims and a "hydro power site," on Chichagof Island. 2/ It further describes the claims as extending "to the drainage from a small lake lying on the north side of Big Chief Mnt." and as occupying parts of secs. 28, 29, 32, and 33, T. 46 S., R. 57 E., as shown on the Sitka D-7 Alaska topographic map. Similar to the letter sent to the Sitka court, the letter sent to BLM states that "it is our intention to hold the claims and do further development work * * *." The letter also lists the claims by the book and page numbers where they were recorded with the Sitka Recording District. Two maps showing the positions of the claims accompanied the letter.

BLM returned appellants' letter and accompanying map to them. Its reason for doing so is not clear from the record as a copy of the cover letter used by BLM is not present in the case file. It appears, however, that BLM returned the letter and maps because the service fee of $5 per claim had not been submitted. 3/ By letter dated October 9, 1979, received by BLM on October 17, 1979, appellant returned its previous letter and maps along with the required fee.

2/ BLM's decision did not address the "hydro-power site," nor does this decision. There is nothing in the record indicating the type of interest appellants believe the site represents.

3/ Under the regulations then in effect, documents unaccompanied by service fees were to be returned to mineral claimants. 44 FR 9720, 9722 (Feb. 14, 1979). Consistent with the decision in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), aff'g, 479 F. Supp. 309 (D. Utah 1979), the regulation was changed to the current version which treats failure to submit the fee as a curable defect. 43 CFR 3833.1-3; see 47 FR 19298 (May 4, 1982) (proposed rules).

We find that the language in appellants' letter of July 25, 1979, quoted above, is sufficient to show that it was filed with BLM as a notice of intent, satisfying the first requirement set forth in Add-Ventures, Ltd., supra. Similarly, the description of the position of the claims would seem sufficient to satisfy the statutory requirement to provide a description sufficient to locate the claimed lands on the ground. Additionally, while the letter did not expressly state the names of the claims, but rather that "L & S Mines, Inc., has 24 mining lode claims," the names of the claims are not materially different from this description. 4/ See Rudolph A. Dobnik, 50 IBLA 225 (1980).

It is more difficult to determine whether the letter appellants sent to BLM qualifies as a "copy" of that recorded with the Alaska court. The relevant language of the statute and regulations was reviewed in Bernice Sheldon, 87 IBLA 161 (1985). In that case the Board concluded:

> [T]he document that was filed with the county was substantially the same as that previously filed with BLM. We are not prepared to hold, in such circumstances, that the notice of intention to hold the claims involved herein originally filed with BLM was not a "copy" of the instrument filed with the Kotzebue Recording District, within the meaning of section 314(a)(2) of FLPMA. 4/ See Carr v. National Capital Press, 71 F.2d 220 (D.C. Cir. 1934). Indeed, the document filed with BLM was fully consonant with the purpose of the statutory requirement for annual filings, i.e., to notify BLM of the continuing vitality of mining claims located on the public lands. See Topaz Beryllium Co. v. United States, supra; cf. S. Rep. No. 583, 94th Cong., 2d Sess. 64-65 (1975).
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> 4/ To the extent that the document filed with BLM does not constitute an "exact legible reproduction or duplicate" in accordance with 43 CFR 3833.2-3(b), the failure to comply with the regulatory requirement may be treated as a curable defect of which the claimant should be given notice and an opportunity to rectify prior to any decision voiding the claims. Harvey A. Clifton, supra [60 IBLA] at 34. This principle, derived from the case of Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981), is currently set forth at 43 CFR 3833.4(b).

Bernice Sheldon, supra at 163-164.

In comparing the letter appellants sent to the Alaska court with that sent to BLM, we note that the only significant difference is that the letter

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4/ The claim names found on the certificates of location are the L & S Mining Claim #1, L & S Mining Company Claim #2, L & S No. 3A, and L & S Mines, Inc. Claim #4, with the remainder bearing names identical to the last except for the claim number.

sent to the court omits the description of the claims, but rather identifies them as L & S Mines, Inc. lode claims and by book and page references. In doing so, claims numbered 23 and 24 are omitted. For this reason, we cannot conclude that in respect to these claims the letter filed with BLM was a copy of that filed with the court.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to claims numbered 23 and 24 and reversed as to claims numbered 1 through 22.

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Franklin D. Arness
Administrative Judge

We concur:

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Gail M. Frazier
Administrative Judge

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C. Randall Grant, Jr.
Administrative Judge